# Select Special Freedom of Information and Protection of Privacy Act Review Committee

# Final Report

November 2002

Legislative Assembly of Alberta

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Protection of Privacy Act Review Committee
801 Legislature Annex
9718 – 107 Street
Edmonton, Alberta T5K 1E4
karen.sawchuk@assembly.ab.ca

## EXECUTIVE SUMMARY OF COMMITTEE RECOMMENDATIONS

The Select Special Committee made the following recommendations for action, including amendments to the *Freedom of Information and Protection of Privacy (FOIP) Act,* where necessary to implement the recommendation.

1. That the criteria for designating a Government agency, board or commission as a public body under section 1(p)(ii) be that

    - the government appoints a majority of members to the body or to the governing body of the organization,
    - the body receives the majority of its continuing funding from government, or
    - the government holds a controlling interest in the share capital of the organization; and

    that these criteria be established in the legislation rather than in government policy; and that the criteria for deletion of a public body under section 94(2) be amended to be consistent with the criteria for designation as a public body.

2. That the FOIP legislation be amended to permit, but not require, the designation of delegated administrative organizations (DAOs) as public bodies, and that the criteria for the designation of DAOs as public bodies be developed in policy.

3. That the Government of Alberta, when renegotiating its contract for municipal policing services with the RCMP, consider whether it is appropriate to include the RCMP within the scope of the Alberta *FOIP Act.*

4. That the *Traffic Safety Act* be amended to delete the reference to section 40 of the *FOIP Act* as it relates to information concerning individuals (for example, names and addresses collected for operator and vehicle licensing purposes) and prescribe specific criteria, which would be based on balancing fair information practices and the public interest, for permitting the disclosure of personal information from the motor vehicle registry by the Registrar; and also that a new subsection be added to the *Traffic Safety Act* allowing a decision of the Registrar to be reviewed by the Information and Privacy Commissioner; and finally, that the *FOIP Act* be amended to give the Commissioner the appropriate authority to review the Registrar's decision, investigate complaints, hold an inquiry into the matter, and issue an order.

5. That private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection.

6. That section 4(1)(l)(vi) be amended to read "in an office of the director or a district registrar as defined in the *Vital Statistics Act.*"

7. That section 4(1)(l)(vii) be amended to make this exclusion applicable only to registries authorized or recognized by law to which public access is normally permitted.

8. That the *Election Act* be amended to require the creation and revision of the Register of Electors using personal information that the Chief Electoral Officer has determined

is necessary for this purpose, and to permit the Office of the Chief Electoral Officer to use telephone numbers listed in a public telephone directory, where available, for the purpose of creating and revising the Register of Electors.

9. That the Department of Energy consider the protection of information provided in support of oil sands royalty calculations the next time the *Mines and Minerals Act* is opened.

10. That section 4(1)(n) be amended to parallel section 4(1)(m) by excluding "a personal record of an appointed or elected member of the governing body of a local public body."

11. That consideration be given to the harmonization of the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act* during the initial three-year review of the *Health Information Act*.

12. That any consultation on private sector privacy legislation include Alberta Treasury Branches and other public bodies engaged in commercial activities.

13. That issues relating to the collection, use, and disclosure of personal information from public registries be revisited in relation to the development and implementation of private sector privacy legislation.

14. That section 17(2)(b) and section 32(4) be amended to require that public bodies give notice of the disclosure of third party personal information or confidential business information, without specifying the manner of giving notice.

15. That section 83 (manner of giving notice) be amended to harmonize with the *Electronic Transactions Act*, such that a public body may provide notices under the *FOIP Act* by electronic means, providing that the person to whom the notice is being given consents to the use of electronic means, as determined under section 8 of the *Electronic Transactions Act*.

16. That the language of section 30 be amended to make it clear that third party notice is not required if section 29(1) applies to the information.

17. That the Information Management, Access and Privacy division review the definition and interpretation of the word "guardian" in section 84(1)(e) of the *FOIP Act* with a view to recognizing the importance of shared parenting and ensuring harmony with developments in family law that further the goals of shared parenting.

18. That section 16(3)(c), which states that the exception for disclosure harmful to the business interests of a third party does not apply to non-arm's length transactions, be amended to refer to a "public body" rather than to the "Government of Alberta."

19. That section 17(2)(d) (disclosure for research purposes in response to an access request) be deleted.

20. That section 17(2)(j)(ii) be deleted from the *FOIP Act* on the grounds that this provision was added to allow for disclosure of information by health care bodies and

that the proclamation of the *Health Information Act* has made the provision unnecessary.

21. That section 17(4) be amended to state that it is presumed to be an unreasonable invasion of personal privacy to disclose personal financial information, including bank account information and credit card numbers.

22. That an expert who provides an opinion under section 18(2) of the *FOIP Act* not be required to enter into an agreement relating to the information disclosed for the purpose of the opinion if the person is a custodian under the *Health Information Act*.

23. That section 29 be amended to allow a public body to refuse to disclose to an applicant information that is readily available to the public or is available for purchase.

24. That the *Occupational Health and Safety Act* be amended to permit the Minister responsible for the administration of that *Act* to publish only that information contained in an injury prevention register, to be comprised of employer names and their injury prevention performance information, as determined by the Minister. It is understood that the register would include business information only, not personal information, and that the Minister would define the indices, measurements or standards and further circumscribe the publication.

25. That the fees for services referred to in section 93(1) of the *Act* be revised as needed to more accurately reflect the current costs of those services for which an applicant may presently be charged, so that there continues to be a reasonable sharing of costs by the applicant and the public body.

26. That section 93 be amended to clarify that a request for a fee waiver must be made in writing and that the decision of the head must be communicated in writing within 30 days of receiving the request for a fee waiver.

27. That, for greater certainty, the definition of "personal information" (section 1(n)) be amended to add "genetic information," and to specify that "personal information" includes not only information relating to an individual's fingerprints, but biometric information in general.

28. That sections 36(1) and 37(2) be amended so that an "individual" rather than an "applicant" may make a correction request.

29. That the references in the *Act* to "consent in writing" (section 17(2)(a)) or "consent in the prescribed form" (sections 39(1)(b) and 40(1)(d)) be changed to "consent as prescribed in the regulations"; and that the new rules on the manner of consent be developed, in consultation with the Information and Privacy Commissioner, to

    - state the functional requirements for both oral and written consent,
    - explicitly provide for electronic consent (consent in writing includes electronic consent under the *Electronic Transactions Act*), and
    - set new standards for authentication of identity and notification for oral consent.

30. That the *FOIP Act* be amended to allow for the routine use and disclosure of an individual's name, business address, business telephone and facsimile numbers, business e-mail address, and other business contact information.

31. That a provision be added to section 40 to permit a public body to disclose information to the Medical Examiner for the purposes of a fatality inquiry.

32. That authority for disclosure of personal information in decisions of administrative tribunals be established in the tribunal's governing legislation, and that consideration be given to facilitating the amendment of affected Acts through the use of an omnibus bill in which legislation could be included at the request of individual ministries.

33. That the *Municipal Government Act* be amended to protect the name and mailing address of the property owner from routine disclosure under section 307 of the *Municipal Government Act*.

34. That section 43 be amended to make the reference to disclosure for research purposes apply only to the disclosure under a research agreement, to clarify that references to time periods are based on the date of the record, and to delete the reference to restrictions or prohibitions by other Acts.

35. That the provision for the archives of a post-secondary educational body (section 43(2)) be deleted.

36. That the Commissioner review the processes that his Office has established for both mediation, under section 68, and investigations, under section 53(2), and make any necessary changes to the processes after considering the comments made in the public submissions to the Committee.

37. That the *FOIP Act* be amended to provide the Commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances.

38. That the contents of the FOIP directory include only the name of the public body and contact information for the FOIP Coordinator and that this directory be published only in electronic form on the Freedom of Information and Protection of Privacy Web site.

39. That each public body be responsible for maintaining and publishing a directory of its personal information banks in electronic or other form and that the directory for each public body include the title and location of the personal information bank, a description of the kind of personal information and the categories of individuals whose personal information is included, the authority for collecting the personal information, and the purposes for which personal information is collected, used, or disclosed.

40. That the Information Management, Access and Privacy division investigate and study the merits of developing a database of requests filed with provincial public bodies similar to foilaw.net.

41. That section 89(1) be amended to delete the phrase "within 2 years after this section comes into force."

42. That section 97 be amended to allow for a review of the *Act* to begin within six years of the submission of the report of the present Select Special Committee.

43. That the Information Management, Access and Privacy division continue to provide a training program and related support services to promote an understanding of the *FOIP Act*.

The Select Special Committee made the following recommendations for no change to the *FOIP Act*.

44. That self-governing professional associations not be made subject to the *FOIP Act*.

45. That private schools and private colleges not be made subject to the *FOIP Act*.

46. That section 4(1)(g) not be amended to exclude all examination questions from the *FOIP Act*.

47. That section 4(1)(h) not be expanded to include personal information of a student acquired during the process of instruction or for the purpose of enhancing the learning environment.

48. That section 4(1)(h) not be extended to exclude the teaching materials of all public bodies from the *FOIP Act*.

49. That the exclusion of treasury branch records under section 4(1)(r) of the *FOIP Act* remain unchanged.

50. That the *FOIP Act* not be amended so that school jurisdictions do not have to process FOIP requests for student records during periods when the schools are closed.

51. That the *FOIP Act* not be amended to permit the head of a public body to refuse or disregard an access request if that head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious.

52. That section 16 of the *Act* not be amended to change the balance between the interests of third parties or the rights of applicants.

53. That the exception for confidential third party business information (section 16(1)) not be amended to allow more disclosure of information about government contracts awarded to business and the basis for awarding such contracts.

54. That section 18 (disclosure harmful to individual or public safety) not be amended.

55. That section 19 not be expanded to allow a public body to refuse to disclose evaluative or opinion material compiled for the purpose of determining admission to undergraduate and graduate university programs.

56. That section 19 not be expanded to allow a public body to refuse to disclose peer evaluations of student performance.

57. That the law enforcement exception in the *Act* not be expanded.

58. That a discretionary provision not be added to the *Act* to allow local government bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm relations between a local government body and other government entities.

59. That section 21(1)(b) not be amended to allow public bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal information supplied in confidence by any local public body.

60. That the provisions relating to time limits for the review process and the time limit extensions on reviews not be amended.

61. That the Commissioner not have the authority to directly levy a fine for contravention of an offence under the *FOIP Act*.

62. That the Commissioner not have the power to award costs to a party following an inquiry.

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## MANDATE

On November 28, 2001, the Legislative Assembly of Alberta passed a motion appointing an all-party Committee to review the *Freedom of Information and Protection of Privacy Act,* to determine whether the *Act* and its supporting policy and administration provide an appropriate balance of access to information and protection of privacy, in accordance with the original intent; and to provide to the Assembly a report that includes any recommended amendments.

The Committee consists of:

Mr. Brent Rathgeber, Q.C., Edmonton-Calder, Chair
Mrs. Mary Anne Jablonski, Red Deer-North, Deputy Chair
Ms Debby Carlson, Edmonton-Ellerslie
Ms Alana DeLong, Calgary-Bow
Mr. Broyce Jacobs, Cardston-Taber-Warner
Mr. Thomas A. Lukaszuk, Edmonton-Castle Downs
Mr. Hugh MacDonald, Edmonton-Gold Bar
Mr. Brian Mason, Edmonton-Highlands
Mr. Gary Masyk, Edmonton-Norwood

## INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (FOIP Act)* was given royal assent in 1994 and came into force on October 1, 1995 for provincial government ministries. It was extended to school jurisdictions on September 1, 1998, to health care bodies on October 1, 1998, to post-secondary educational institutions on September 1, 1999, and to local government bodies on October 1, 1999.

The *Act* provides a right of access to records in the custody or under the control of a public body, including access by individuals to their own records, subject to specific and limited exceptions. The *Act* also establishes limitations to the collection, use and disclosure of personal information by public bodies, to protect the privacy of individuals.

In 1993, when Premier Klein introduced this legislation, he encouraged Albertans to present their views on it through an all-party Panel. The Panel recommended that, three years after implementation of the *Act*, an all-party Legislative Assembly Committee be established to undertake a formal review. That Committee, which reported in 1999, recommended a second three-year review to allow local public bodies an early opportunity to comment on the application of the legislation after some experience of administering the *Act*. This recommendation was included in the *Act* as section 97.

This final report presents the recommendations of the all-party Legislative Assembly Committee after its deliberations on the submissions received during the consultation process, as well as comments and feedback received in response to a preliminary report issued by the Committee on August 28, 2002.

In a number of cases the Committee was unanimous in its recommendation; in other cases, it was not possible to reach unanimous agreement and the recommendation represents the majority view. There were a few instances where the opinions that emerged from the consultation process were diametrically opposed and where the Committee aimed to find a balanced compromise.

The proceedings of the Select Special Freedom of Information and Protection of Privacy Act Review Committee are recorded in *Hansard* and are available online at: www.assembly.ab.ca.

## ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the many Albertans who submitted written briefs and letters and/or appeared before the Committee for their valuable contributions to this important process.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff.

Technical Support Team

Mr. Clark Dalton, Alberta Justice
Ms Sarah Dafoe, Alberta Justice
Ms Donna Molzan, Alberta Justice
Mr. John Ennis, Office of the Information and Privacy Commissioner
Mr. Tom Thackeray, Alberta Government Services
Ms Jann Lynn-George, Alberta Government Services
Ms Hilary Lynas, Alberta Government Services
Ms Linda Richardson, consultant to Alberta Government Services
Ms Gwen Vanderdeen-Paschke, Alberta Government Services

Support Staff

Mrs. Corinne Dacyshyn, Legislative Assembly of Alberta
Mrs. Karen Sawchuk, Legislative Assembly of Alberta
*Hansard* Staff, Legislative Assembly of Alberta

## THE PUBLIC CONSULTATION PROCESS

In March 2002, a Discussion Guide entitled "Looking Ahead" was distributed to help Albertans contribute to the review process. The Guide was distributed to more than 1,500 individuals, public bodies and other organizations. Over 125 submissions were received by the Committee, within the following categories:

| Number | Category |
|---|---|
| 47 | Local Public Bodies |
| *20* | *Municipal Governments* |
| *7* | *Health Care Bodies* |
| *5* | *Housing Management Bodies* |
| *5* | *Public Libraries* |
| *4* | *School Jurisdictions* |
| *3* | *Post-Secondary Educational Institutions* |
| *3* | *Police Services* |
| 22 | General Public |
| 17 | Business/Professional Associations |
| 17 | Businesses |
| 11 | Self-Governing Professional Associations |
| 6 | Other |
| 6 | Government Sector |
| 1 | Alberta Government Services |
| 1 | Information and Privacy Commissioner |
| 128 | Total |

A list of individuals and organizations that provided written submissions to the Committee is presented in Appendix A.

In addition to receiving written submissions, the Committee also heard 16 oral presentations from various organizations and individuals, including the Office of the Information and Privacy Commissioner, the Government of Alberta and Alberta Registries. A list of individuals and organizations that provided oral presentations to the Committee is presented in Appendix B.

The Committee conducted a comprehensive analysis of the issues raised and formulated a number of recommendations, which are listed in the next section of this report. The Committee also considered a number of issues where it was determined that no action should be taken. The recommendations for no change to the *Act* are listed in the second section of the report.

The Committee issued its Preliminary Report on August 28, 2002 and invited further comments. The 33 individuals and organizations that provided written submissions in response to the Preliminary Report are listed at the end of Appendix A.

The Final Report includes a summary of the Committee's deliberations and its final recommendations after considering responses to the Preliminary Report. This Final Report will be tabled in the Legislative Assembly of Alberta in November 2002.

## COMMITTEE RECOMMENDATIONS

### ■ Scope of the *Act*

The Committee considered whether the current scope of Alberta's public sector access and privacy legislation continued to be appropriate. The *FOIP Act* applies to "public bodies," as defined in section 1(p) of the *Act*. Government agencies, boards and commissions are designated as public bodies in Schedule 1 of the FOIP Regulation in accordance with Government of Alberta policy.

#### Criteria for the inclusion of Government agencies, boards and commissions

The criteria for designating agencies, boards, and commissions in Schedule 1 of the FOIP Regulation were established in Government policy in 1995. The Select Special Committee that reviewed the *FOIP Act* in 1998-99 recommended that the criteria for the inclusion of agencies, boards and commissions be set out in statute or regulation. When the *FOIP Act* was amended in 1999, a regulation-making power was added to allow for this. Later, when the FOIP Regulation was to be amended, the department responsible for the administration of the *Act* undertook a review of the existing criteria to ensure that they were still appropriate and could be applied consistently across government.

The Committee heard that financial interest and power to appoint the members of the governing body were still applicable as criteria for inclusion within the scope of a public sector access to information and privacy statute. The Committee recognized, however, that the structure and financing of many government agencies have changed since the original criteria were developed in Ontario two decades ago, and that there was a need for some flexibility. This was particularly the case with respect to funding, since few agencies rely exclusively on the general revenue fund. Also, as a result of partnerships with the private sector and income from licences and fees, sources of revenue are not necessarily constant from year to year.

The Committee discussed different sources of funding and considered whether specifying the criteria might have the unintended consequence of bringing organizations under the *Act* if they received grant funding or funding through a voucher system. It was concluded that this was not the case.

The Committee was in favour of adding the criteria to the FOIP Regulation in order to promote transparency. This was not intended to change the way in which these criteria are currently being applied. It was noted that the criteria for deleting a body from the schedule of public bodies would need to be made consistent with the criteria for designation as a public body and that the Information and Privacy Commissioner would continue to review proposals for any deletion from the schedule of public bodies.

The Committee recommended:

1. That the criteria for designating a Government agency, board or commission as a public body under section 1(p)(ii) be that

    - the government appoints a majority of members to the body or to the governing body of the organization,

- the body receives the majority of its continuing funding from government, or
- the government holds a controlling interest in the share capital of the organization; and

that these criteria be established in the legislation rather than in government policy; and that the criteria for deletion of a public body under section 94(2) be amended to be consistent with the criteria for designation as a public body.

### Delegated administrative organizations

Delegated administrative organizations (DAOs) are independent organizations to which the government has delegated the delivery of specified services in accordance with government policy. DAOs are not controlled by the government and do not normally have an active role in developing governmental policy.

During the 1998-99 review of the *FOIP Act*, it was recommended that the scope of the *Act* be expanded to apply to organizations whose primary purpose is to perform functions under an enactment. This recommendation could not be implemented immediately because there was no complete inventory of these entities, and there had been no broad consultation with organizations that might be affected by a change to criteria for inclusion within the scope of the *FOIP Act.*

The present Committee received a number of suggestions for expanding the scope of the *Act* to include DAOs and considered several policy options. It was generally agreed that the *Act* should apply in cases where an organization serves a significant regulatory function and there is a public interest in access to information and privacy protection. It was noted that this was already the case to a large extent, since DAOs generally operate under legislative or contractual provisions that require compliance with the *FOIP Act.*

At the same time, the Committee recognized that, to expand the scope of the *Act* in the most effective way, it would be necessary to develop appropriate criteria and supporting guidelines. Also required was attention to the interaction of the *FOIP Act* with other legislation, such as the federal private sector privacy Act.

The Committee considered whether allowing, but not requiring, the inclusion of DAOs within the Schedule of public bodies to which the *FOIP Act* applies would be the most appropriate and practical response. A question was raised as to whether this would provide sufficient direction to ministries. Ultimately, the Committee agreed that there was a need to allow for some flexibility and for a phased approach to adding DAOs to the Schedule of public bodies. It was decided that DAOs should be included, in accordance with government policy, on the recommendation of the Minister responsible for the legislation under which the DAO operates.

The Committee unanimously recommended:

2. That the FOIP legislation be amended to permit, but not require, the designation of delegated administrative organizations (DAOs) as public bodies, and that the criteria for the designation of DAOs as public bodies be developed in policy.

## The RCMP acting as a local police service

The *FOIP Act* appears to apply to the RCMP under section 1(i)(x)(B) of the *Act*, because "police services," as defined in the *Police Act*, includes provincial police services provided by the RCMP under a federal and provincial agreement.

The Committee considered an issue raised by the Information and Privacy Commissioner, which was whether the *Act* currently applies to the RCMP and if not, whether it should apply. The RCMP is a federal agency, subject to the federal *Privacy Act*, and the federal *Access to Information Act*. When the RCMP is acting under contract to a province or a municipality as a local police service, it deals with local policing issues. An individual in Edmonton, Calgary or Lethbridge with an access to information or privacy issue with the police service can use the Alberta FOIP legislation because the police services in those cities are subject to the *FOIP Act*. An individual in a municipality where the RCMP is the local police service uses the federal access and privacy legislation.

The Commissioner raised this as a jurisdictional issue, which could be resolved contractually if the RCMP agreed to be governed by provincial legislation. The Committee examined the question of whether the federal or provincial legislation provided greater rights and noted that the main practical difference was that the Commissioner under Alberta's *FOIP Act* has the power to make legally binding Orders whereas the Access to Information and Privacy Commissioners under the federal legislation may only make recommendations. The Committee considered it important that Albertans in communities served by the RCMP have the same rights as other Albertans with respect to their police force, and recommended:

3. That the Government of Alberta, when renegotiating its contract for municipal policing services with the RCMP, consider whether it is appropriate to include the RCMP within the scope of the Alberta *FOIP Act*.

## ■ Records and information to which the *Act* applies

The Committee considered whether the current application of the *Act* allowed for appropriate access to information and privacy protection. Section 4 of the *Act* specifies those classes of records and information where the *Act* does not apply. Section 5 provides for the relationship between the *FOIP Act* and other Acts and for cases where there is a conflict or inconsistency.

### Disclosure of personal information in the Motor Vehicle Registry

Records made from information in the Motor Vehicle Registry are excluded from the *FOIP Act*. However, when section 8 of the *Traffic Safety Act* (*TSA*) is proclaimed in force, the *TSA* will allow the Motor Vehicle Registry to disclose personal information only when section 40 of the *FOIP Act* would permit the disclosure.

The Committee regarded access to registry information as an important issue and considered information presented on the way privacy was being handled by Alberta Registries. It was noted that the Auditor General and the Information and Privacy Commissioner conducted an audit of the Registries in 1998 and made recommendations for the adoption of fair information practices to protect privacy. The Committee was advised that Alberta Registries had a policy on disclosing information which allowed for certain commercial uses by the insurance industry and private investigators, but did not allow for disclosure to The War Amps.

The Committee was very supportive of The War Amps' service work in Alberta and throughout Canada. The War Amps' presentation, submissions and expressions of public support for the Key Tags program were acknowledged by the Committee. Committee members also recognized the complexity of privacy issues involved in disclosure of personal information for purposes other than the purpose for which the information was collected. They considered requiring individual consent for disclosure. The Committee also considered the differences between The War Amps and other charities, and the costs to The War Amps of compiling a list of names and addresses in the absence of obtaining access to Registry information.

The Committee felt that it should be possible to define criteria consistent with fair information practices and the public interest, such that a limited amount of personal information could be disclosed to The War Amps and to other organizations in appropriate cases, and recommended:

4. That the *Traffic Safety Act* be amended to delete the reference to section 40 of the *FOIP Act* as it relates to information concerning individuals (for example, names and addresses collected for operator and vehicle licensing purposes) and prescribe specific criteria, which would be based on balancing fair information practices and the public interest, for permitting the disclosure of personal information from the motor vehicle registry by the Registrar; and also that a new subsection be added to the *Traffic Safety Act* allowing a decision of the Registrar to be reviewed by the Information and Privacy Commissioner; and finally, that the *FOIP Act* be amended to give the Commissioner the appropriate authority to review the Registrar's decision, investigate complaints, hold an inquiry into the matter, and issue an order.

## Disclosure of driver information to parking lot companies

An issue closely related to the general issue of disclosure of Motor Vehicle Registry information was the specific issue of disclosure of driver information (name and mailing address) to private parking lot companies for the purpose of debt collection.

It was argued that Albertans are required to register their vehicles with Alberta Registries for specific purposes, and that these do not include the enforcement of the law of trespass on privately owned land. Trespass is not a motor vehicle or traffic offence and it was suggested that disclosure of personal information for the purpose of allowing a private sector organization to collect a debt was not consistent with fair information practices. It was further argued that it was inappropriate to disclose personal information to a parking company to allow it to enforce a remedy for breach of contract.

It was suggested that the Committee's recommendation on establishing criteria for disclosure within the *Traffic Safety Act* (*TSA*) would address this particular disclosure practice. However, some Committee members felt that a separate recommendation would provide clarity on this point, since the case had been made successfully in the past that there was a close enough link between the alleged offence and the driver information to justify the disclosure. Some Committee members also believed that certain practices of parking companies in relation to debt collection justified singling out parking companies among the larger group of current users of Motor Vehicle Registry information.

The Committee recommended:

5. That private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection.

## Vital Statistics information

Section 4(1)(l)(vi) of the *FOIP Act* deals with the exclusion of a record made from information in an office of a district registrar as defined in the *Vital Statistics Act.*

The Committee noted that a recent Information and Privacy Commissioner's Order suggested that the current exclusion for a record made from information "in an office of a district registrar as defined in the *Vital Statistics Act*" is unclear. The Commissioner interpreted the exclusion to apply to information relating to the functions and duties associated with the office. The Committee noted that Alberta Registries agreed with the Commissioner's interpretation.

The Committee recommended a technical amendment:

6. That section 4(1)(l)(vi) be amended to read "in an office of the director or a district registrar as defined in the *Vital Statistics Act.*"

## Information in registries operated by public bodies

The *FOIP Act* does not apply to information in a registry operated by a public body where public access to the registry is normally permitted (section 4(1)(l)). The Information and Privacy Commissioner has interpreted this provision to refer to registries "authorized or recognized by law."

A technical amendment was requested to recognize the Commissioner's interpretation in the *Act*. Although there was no evidence that personal information in a public body registry had been improperly disclosed, it was suggested that an amendment consistent with the Commissioner's ruling would enhance the protection of personal privacy under the *Act*. It would ensure that a public body could not simply designate a collection of personal information as a registry and so remove it from the scope of the *Act*.

The Committee unanimously recommended:

7. That section 4(1)(l)(vii) be amended to make this exclusion applicable only to registries authorized or recognized by law to which public access is normally permitted.

## Disclosure of personal information to the Chief Electoral Officer

The *FOIP Act* permits the disclosure of personal information to the Chief Electoral Officer if the information is necessary for the performance of the duties of that officer (section 40(1)(z)).

The Chief Electoral Officer raised a concern that the language of the *Election Act* ("the Register of Electors *may* be created and revised," section 13(2)(c)) does not provide adequate authority for public bodies to disclose the information needed to maintain the Register. He recommended an amendment to the *Election Act* to *require* the creation and revision of the Register using personal information from a number of different sources. Public bodies would then be clearly authorized to provide personal information to the Chief Electoral Officer for the purpose of maintaining the Register of Electors.

The Register of Electors is used to compile Lists of Electors (or Voters Lists) for general elections, by-elections, referendums and plebiscites. The List of Electors contains only the name, address, postal code, and telephone number of an elector. The Register of Electors also contains the gender, birth date, and date of residence in Alberta of a person eligible to be an elector.

The *Election Act* allows for the use of any information obtained by or available to the Chief Electoral Officer. The Chief Electoral Officer believes that the Register could be enhanced if his Office were able to obtain access to data from a wide range of sources, such as the Motor Vehicle Registry, health care records, municipal assessments, seniors' benefit records and telephone listings. The Chief Electoral Officer also believes that the Register could be kept up to date more effectively if his Office were permitted to use telephone numbers listed in public telephone directories to verify the accuracy of information in the Register. Telephone numbers collected for this purpose would not be included in the Voters List.

The Committee discussed enumeration procedures, current updates from Vital Statistics records, and the elector confirmation process. Committee members wanted to ensure that any change to the registration of electors would protect elector rights and that no elector would be disenfranchised by any new procedure. The Committee also discussed whether municipalities and the province would be able to share the List of Electors generated from the Register. The Chief Electoral Officer said that the information could be made available, but that there had not been much interest so far from municipalities.

The Committee supported the Chief Electoral Officer's proposal and recommended:

8. That the *Election Act* be amended to require the creation and revision of the Register of Electors using personal information that the Chief Electoral Officer has determined is necessary for this purpose, and to permit the Office of the Chief Electoral Officer to use telephone numbers listed in a public telephone directory, where available, for the purpose of creating and revising the Register of Electors.

### Access to oil sands royalty information

The *FOIP Act* provides a mandatory exception for information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax (section 16(2)). The Committee considered a request from petroleum producers for a similar mandatory exception to apply to information submitted for purposes of calculating, verifying, determining or forecasting oil sands royalties and supporting information provided in association with the Oil Sands Royalty Regulations. Petroleum producers submitted that oil sands royalty information is different from information supplied for conventional oil and gas royalties. It is more detailed than a corporation's business information filed under the provincial and federal income tax requirements.

In the spring of 2002, a provision of the *Mines and Minerals Act* regarding the confidentiality of oil and gas royalty information was amended to establish greater certainty about access to this information, which is considered very sensitive within the industry. This confidentiality provision prevails over the access provisions of the *FOIP Act* for a period of five years after the information is filed. After five years, a person may request the information under the *FOIP Act* and the public body must determine whether the disclosure would be harmful to the business interests of the third party.

The Committee considered arguments from petroleum producers that this five-year period is insufficient for oil sands projects because of the long-term investment required (20 to 25 years). The industry argued that the *FOIP Act* should be amended to ensure absolute protection from third party access for confidential business information that is supplied by oil and gas companies to Alberta Energy under the *Mines and Minerals Act* and Oil Sands Royalty Regulations.

The Committee also considered the argument that the *FOIP Act* provides adequate protection for royalty information through the mandatory exception for disclosure of confidential business information that would harm the business interests of a third party (section 16(1)).

The protection of royalty information was considered when the *Energy Information Statutes Amendment Act* was debated in the Legislature in the Spring of 2002. The Committee agreed that if the Legislature believed that the protection provided by the provision in the *Mines and Minerals Act* should be extended, this should be done in the *Mines and Minerals Act*, and not in the *FOIP Act* and recommended:

9. That the Department of Energy consider the protection of information provided in support of oil sands royalty calculations the next time the *Mines and Minerals Act* is opened.

## Records of members of the governing bodies of local public bodies

When the *FOIP Act* was amended following the review in 1999, section 4(1)(n) was added. This provision excludes from the scope of the *Act* a personal record of an appointed member of the governing body of a local public body. The intention of this addition was to provide a consistent approach to the records of members of the governing bodies of all local public bodies, whether elected (as in local government and school boards) or appointed (as in the case of the Boards of Governors of post-secondary educational institutions) or both (as in regional health authorities).

It was subsequently noted that certain governing bodies of post-secondary educational bodies (academic councils and general faculties councils) have elected members whose personal records should also be excluded from the scope of the *Act*. A technical amendment was requested to correct this oversight.

The Committee recommended:

10. That section 4(1)(n) be amended to parallel section 4(1)(m) by excluding "a personal record of an appointed or elected member of the governing body of a local public body."

## Harmonization of the *FOIP Act* and the *Health Information Act*

Health information, as defined in the *Health Information Act* (*HIA*), is excluded from the scope of the *FOIP Act* under section 4(1)(u) of the *FOIP Act*.

If a public body such as a regional health authority, which is a custodian under *HIA*, receives a request for access to an individual's own health information, the rules regarding access to information under the *HIA* apply to that information. The rules regarding access to information under the *FOIP Act* apply to the individual's other personal information, as defined under section 1(n) of the *FOIP Act*.

A number of submissions to the Committee commented on the need for harmonization of the *FOIP Act* and the *HIA*. Respondents raised concerns about a range of issues, including the disclosure of patient registration information, disclosure of information about deceased relatives and disclosure of patient information by ambulance operators. The Committee was satisfied that the *FOIP Act*'s provision for disclosure of information about deceased relatives was working well. The Committee noted that the *Ambulance Act* and regulations were currently under review. The matter of patient registration information is addressed in a separate recommendation (Recommendation 20).

*HIA* includes a provision for a review to commence by April 2004. The Committee noted that *HIA* is a new Act, and that the 2004 review would provide an opportunity to consider how it is working and what changes might be proposed by the health care sector.

The Committee believed that the harmonization issues would be best dealt with during the *HIA* review and unanimously recommended:

11. That consideration be given to the harmonization of the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act* during the initial three-year review of the *Health Information Act*.

## Public bodies engaged in commercial activities

The federal *Personal Information Protection and Electronic Documents Act* (*PIPED Act*) will apply to every organization that collects, uses or discloses personal information during the course of a commercial activity, as of January 1, 2004. The definition of "organization" includes corporations, associations, non-profit organizations, trade unions, and partnerships. Provincial ministries and Crown agents will not be covered by the *PIPED Act*. The *Act* will also not apply to organizations within a province that has passed legislation that is substantially similar to the *PIPED Act*.

Alberta Treasury Branches (ATB) submitted that the *FOIP Act* was designed for the public sector and that the *PIPED Act*, or similar provincial privacy legislation, would be better suited to a commercial organization competing with private sector businesses. The Committee appreciated that the introduction of private sector privacy legislation was likely to affect not only ATB but also other commercial enterprises owned or operated by public bodies.

Committee members agreed in principle that public sector organizations that compete with private sector businesses should operate within a similar regulatory framework. It was suggested that there might be scope for addressing ATB's concerns in the development of provincial private sector privacy legislation.

Since private sector privacy legislation was outside the scope of the current review, the Committee made a recommendation regarding future consultation:

12. That any consultation on private sector privacy legislation include Alberta Treasury Branches and other public bodies engaged in commercial activities.

## Collection of personal information in public registries by private sector organizations

The *FOIP Act* does not apply to information in the office of the Registrar of Motor Vehicle Services or in other public registries, such as the Personal Property Registry and Land Titles. The rationale for this exclusion from access and privacy legislation is that the use of this information in accordance with longstanding practices serves a number of legitimate interests.

However, disclosure of information in registries to lawyers, insurance companies, private investigators, businesses and charitable organizations may be affected indirectly by the federal *Personal Information Protection and Electronic Documents Act* (*PIPED Act*), or similar provincial private sector privacy legislation, as of January 2004. Under the *PIPED Act,* an organization normally requires consent for the collection, use and disclosure of an individual's personal information. This means that, even if registry information can legally be disclosed, an organization may not legally be permitted to collect it.

Private sector privacy legislation was outside the scope of the present review. Nevertheless, many issues raised by private sector respondents to the Committee's discussion paper were relevant to private sector privacy legislation, and in particular, to the effect of this legislation on the use and disclosure of personal information in public registries.

The Committee believed that it would be helpful to ensure that the concerns of respondents are considered in the context of private sector privacy legislation and recommended:

13. That issues relating to the collection, use, and disclosure of personal information from public registries be revisited in relation to the development and implementation of private sector privacy legislation.

## ■ Access to records

The Committee reviewed the process for obtaining access to records, the balance between the interests of third parties and the rights of applicants, and the operation of the *Act*'s provision for the exercise of rights by guardians.

### Manner of giving notice

Two provisions in the *FOIP Act* (section 17(2)(b) and section 32(4)) require that notice of the disclosure of third party personal information or confidential third party business information be "mailed" to the third party. In all other cases involving notices under the *Act*, section 83 applies to allow public bodies to give notice by various means, including fax or courier service.

A technical amendment was requested to make section 83 of the *Act* apply to all notices required under the *Act*. It was noted that the proposed amendment would, in conjunction with a proposal for harmonization with the *Electronic Transactions Act*, allow public bodies to provide electronic notices under certain circumstances.

The Committee agreed with a consistent approach to notices and recommended:

14. That section 17(2)(b) and section 32(4) be amended to require that public bodies give notice of the disclosure of third party personal information or confidential business information, without specifying the manner of giving notice.

### Harmonization with the *Electronic Transactions Act*

Section 83 of the *FOIP Act* sets out the ways in which a public body can provide a notice that is required under the *Act*. When Alberta's *Electronic Transactions Act* (*ETA*) comes into force, it will allow public bodies to conduct transactions electronically, subject to certain rules relating to "functional equivalence" (for example, an electronic record may be functionally equivalent to a paper record in certain circumstances if it can be used for future reference).

A technical amendment was requested to allow public bodies to provide notices electronically under the *FOIP Act* in accordance with the provisions of the *ETA*, where this would be appropriate in the specific circumstances.

The Committee noted that the Information and Privacy Commissioner had commented in his submission that the *ETA* requires that electronic notices be used only with "reasonable" consent. Because of the importance and time-sensitive nature of notices under the *FOIP Act*, the Commissioner asked the Committee to ensure that any amendment of the *Act*'s provision for the manner of giving notice incorporate a reasonableness test. The *ETA* does not require any person to use, provide or accept information in electronic form without consent, which may be inferred, on reasonable grounds, from a person's conduct.

The Committee recommended:

15. That section 83 (manner of giving notice) be amended to harmonize with the *Electronic Transactions Act*, such that a public body may provide notices under the *FOIP Act* by electronic means, provided that the person to whom the notice is being

given consents to the use of electronic means, as determined under section 8 of the *Electronic Transactions Act.*

### Third party notice when information is to be made publicly available

Section 30 of the *FOIP Act* sets out the requirements for third party notification, and section 29(1) permits public bodies to withhold information that is or will be available to the public.

A technical amendment was requested to clarify the relation between these provisions. The intent is that a public body need not provide notice regarding disclosure of third party information if it has been decided that the information is to be made publicly available (for example, submissions in a public consultation process). If the information is not made publicly available within the 60-day time limit, and the request is reconsidered, then the notice provisions may be applicable.

The Committee recommended:

16. That the language of section 30 be amended to make it clear that third party notice is not required if section 29(1) applies to the information.

### Exercise of rights by other persons

Section 84 of the *FOIP Act* provides for the exercise of individual rights and powers by persons other than the individual concerned. The *Act* allows a guardian of a minor to exercise those rights and powers if, in the opinion of the head of the public body, this would not constitute an unreasonable invasion of the personal privacy of the minor (section 84(1)(e)). The term "guardian" is not defined in the *FOIP Act*. Public bodies interpret the term in relation to their own governing legislation.

A concern that arose in a number of different contexts throughout the review was the way in which the term "guardian" was being applied with respect to non-custodial parents. It was argued that any interpretation of section 84(1)(e) should support the principle that individuals, including children, have a right of access to their own personal information, and that, when children are unable to exercise these rights on their own behalf, others need to be able to act for them. It was suggested that, in many cases, this should include a non-custodial parent.

Committee members were supportive of measures that would promote the interests of children, but were not generally in favour of defining the term guardian within the *FOIP Act* to include non-custodial parents. The Committee raised questions about who is in the best position to decide the best interests of a child, the criteria used, and how to ensure that the best interests of the child are protected. The Committee also raised questions about releasing an older child's information against the wishes of the child, and the disclosure of information about a child that would reveal information about the custodial parent.

The Committee recognized the importance of shared parenting and noted that there have been a number of initiatives in family law designed to promote the participation of both parents in a child's life after a separation or divorce.

The Committee agreed that this important issue warranted further research and coordinated effort, and recommended:

17. That the Information Management, Access and Privacy division review the definition and interpretation of the word "guardian" in section 84(1)(e) of the *FOIP Act* with a view to recognizing the importance of shared parenting and ensuring harmony with developments in family law that further the goals of shared parenting.

## ■ Exceptions to the right of access

The Committee considered whether the *Act*'s mandatory and discretionary exceptions to access were appropriate. Sections 16 to 29 of the *Act* provide for specific and limited exceptions to the general rule of public access to information held by a public body.

### Non-arm's length business transactions

The *FOIP Act* requires a public body to refuse to disclose information to an applicant if disclosure would be harmful to the business interests of a third party. However, section 16(3)(c) says that this mandatory exception does not apply if the information relates to a non-arm's length transaction between the Government of Alberta and another party. This provision is meant to ensure transparency in business transactions between public bodies and other parties that are related and which may not be acting in their own independent self-interest. However, section 16(3)(c) refers only to the Government of Alberta and not to local public bodies.

Since the rationale for this provision of the *Act* is that there should be transparency in non-arm's length transactions, it was suggested that section 16(3)(c) should apply to such transactions between local public bodies and other parties, and not just to the Government of Alberta and other parties.

The Committee agreed that, if the government cannot refuse to disclose information relating to non-arm's length transactions, then, for consistency, other public bodies should not be able to refuse to disclose this kind of information, and recommended:

18. That section 16(3)(c), which states that the exception for disclosure harmful to the business interests of a third party does not apply to non-arm's length transactions, be amended to refer to a "public body" rather than to the "Government of Alberta."

### Disclosure for research purposes

The *FOIP Act*'s exception for disclosure of third party personal information states that "it is not an unreasonable invasion of a third party's personal privacy if the disclosure is for research purposes and is in accordance with section 42 or 43."

The Committee was informed that this provision is not needed, since disclosure of personal information under a research agreement involves a different process from disclosure in response to an access request. Disclosure under a research agreement is more appropriately done in accordance with Part 2 of the *FOIP Act*.

The Committee unanimously recommended:

19. That section 17(2)(d) (disclosure for research purposes in response to an access request) be deleted.

### Information regarding admission to a health care facility

Section 17(2)(j)(ii) of the *FOIP Act* states that, subject to certain conditions, it is not an unreasonable invasion of personal privacy to disclose information regarding an individual's

admission to a health care facility as a current patient, except where the disclosure would reveal the nature of the individual's treatment.

Section 17(2)(j)(ii) was added to the *FOIP Act* to allow for disclosure of information by health care bodies. It was suggested to the Committee that the proclamation of the *Health Information Act (HIA)* has made the provision unnecessary, because the disclosure of personal health information held by health care bodies is now governed by *HIA*. *HIA* allows disclosure of this information with the individual's consent or as authorized under other disclosure provisions of that *Act*.

The Committee determined that public bodies under the *FOIP Act* would be able to disclose information regarding an individual's admission to a health care facility in appropriate circumstances, and recommended:

20. That section 17(2)(j)(ii) be deleted from the *FOIP Act* on the grounds that this provision was added to allow for disclosure of information by health care bodies and that the proclamation of the *Health Information Act* has made the provision unnecessary.

### Personal financial information

The *FOIP Act*'s definition of "personal information" includes information about an individual's financial history (section 1(n)(vii)). However, the *Act*'s exception for disclosure harmful to personal privacy (section 17) does not expressly refer to personal financial information.

It was suggested that, in view of concerns expressed by Albertans about the privacy of their personal financial information, especially in the context of electronic credit transactions, the *Act* should expressly state that it is an unreasonable invasion of personal privacy to disclose personal financial information of a third party. It was emphasized that the proposal was not intended to affect the disclosure of financial information relating to a transaction made by an employee on behalf of a public body (e.g. employee travel expenses).

The Committee shared the concerns of Albertans about the privacy and security of credit card information in particular, and reviewed the *Act*'s provisions for protecting this information.

The Committee unanimously recommended:

21. That section 17(4) be amended to state that it is presumed to be an unreasonable invasion of personal privacy to disclose personal financial information, including bank account information and credit card numbers.

### Expert opinions containing health information

Section 18(2) of the *FOIP Act* allows a public body to refuse to disclose an applicant's own personal information to that applicant if this would be likely to result in harm to the applicant. The decision must be supported by an expert, such as a physician or psychologist. The expert providing the opinion must comply with the terms of a confidentiality agreement.

A technical amendment was requested to resolve a possible conflict with the *Health Information Act* (*HIA*). For cases where *HIA* applies to the health information in question, an exception is needed to the general requirement of a confidentiality agreement.

The Committee recommended:

22. That an expert who provides an opinion under section 18(2) of the *FOIP Act* not be required to enter into an agreement relating to the information disclosed for the purpose of the opinion if the person is a custodian under the *Health Information Act*.

## Publicly available information

Section 29 of the *FOIP Act* allows a public body to refuse to disclose information in response to a FOIP request if the information is available for purchase by the public, or will be published or released to the public within 60 days of the receipt of a request for that information. This provision supports public access to information by means other than access requests.

It was drawn to the attention of the Committee that section 29 does not allow a public body to refuse to provide information under the *FOIP Act* if the information is not "available for purchase," but has been made available in some other way or has been published. The information requested might, for example, have been placed in a library or reading room, or have been published in a newsletter or on a public body's Web site.

Committee members wished to promote the active dissemination of information by public bodies. There was some concern, however, about the proposed wording of an amendment. On the one hand, adding a provision for information that was "published" might imply "authorized" publication, which would limit the exception to publications of an official character. On the other hand, a provision relating to published information might be overly broad, in so far as it would allow a public body to refuse to disclose information that may be hard for an individual to obtain (for example, an out-of-print publication). The Committee intended the provision to apply to information that was readily or freely available. On this point, it was noted that information that was readily available was not necessarily without cost.

The Committee agreed that public bodies should pursue opportunities to provide information of public interest outside the *Act* and recommended:

23. That section 29 be amended to allow a public body to refuse to disclose to an applicant information that is readily available to the public or is available for purchase.

## Disclosure of safety performance information

An issue was raised regarding the appropriate balance between the confidentiality of employer information provided to the Workers' Compensation Board (WCB) and the public interest in promoting safety in the workplace by publishing information on the safety performance of employers. It was argued that the public interest would be served by publishing information compiled from data provided by the WCB to the Minister responsible

for occupational health and safety. This would not include any personal information about injured employees.

The Committee was supportive of this initiative as a means of promoting injury prevention and shining a light on both good and poor performance records. On the recommendation of the ministry and the Workers' Compensation Board, it was agreed that the *Occupational Health and Safety Act* should be amended to facilitate the publication of employer safety performance information.

The Committee recommended:

24. That the *Occupational Health and Safety Act* be amended to permit the Minister responsible for the administration of that *Act* to publish only that information contained in an injury prevention register, to be comprised of employer names and their injury prevention performance information, as determined by the Minister. It is understood that the register would include business information only, not personal information, and that the Minister would define the indices, measurements or standards and further circumscribe the publication.

## ■ Fees

The Committee considered the range of advice and suggestions provided in the submissions and whether the current fee structure and the provision for fee waivers were still appropriate.

### Fee structure and schedule of fees

Section 93(1) of the *FOIP Act* allows public bodies to require applicants to pay for certain services provided under the *Act*.

The Committee discussed fees at length, examining the principles on which the current fee structure was based, statistical data on the nature and sources of FOIP requests, and the current fee structure. The Committee also considered comparative data from other jurisdictions and divergent views on the appropriate sharing of the cost of the FOIP program between public bodies and applicants. The Committee reviewed some academic research on fees and analysis of the effect of different fee structures.

In addition, the Committee considered the question of cost recovery in light of the *Eurig* decision of the Supreme Court of Canada, and the Alberta government's subsequent review of fees. It was noted that the *FOIP Act* fee schedule has not been revised since the schedule was established in 1995.

The Committee considered a broad range of options with regard to fees, but ultimately concluded that the current fee structure should be retained, with some relatively minor changes to the schedule of fees, including some changes to reflect the declining cost of electronic media. The Committee was of the view that fees should not be expected to recover the full cost of the access to information process and wanted to ensure that any increases in fees should not create a barrier to access.

The Committee unanimously recommended:

25. That the fees for services referred to in section 93(1) of the *Act* be revised as needed to more accurately reflect the current costs of those services for which an applicant may presently be charged, so that there continues to be a reasonable sharing of costs by the applicant and the public body.

### Processing requests for fee waivers

The head of a public body may excuse an applicant from paying all or part of a fee under certain circumstances specified in section 93(4) of the *FOIP Act*. Public bodies have tended to assume that communications relating to fee waivers must be written, since the *Act* generally requires requests, notices and decisions to be in writing. However, this expectation had not been clear to an applicant in a recent case.

A technical amendment was requested to require that a request for a fee waiver and the decision of the head of a public body on a fee waiver request be provided in writing.

The Committee agreed that putting communications in writing would serve to reduce the likelihood of misunderstanding.

It was further suggested that the *Act* be amended to specify the time allowed for responding to a request for a fee waiver. Although it might reasonably be inferred that a public body must respond within 30 days of receiving the request, the Committee thought it would be helpful to provide further clarification.

The Committee recommended:

26. That section 93 be amended to clarify that a request for a fee waiver must be made in writing and that the decision of the head must be communicated in writing within 30 days of receiving the request for a fee waiver.

## ■ Protection of privacy

The Committee considered whether the privacy provisions relating to the collection, use and disclosure of personal information contained in the *Act* adequately protect the privacy of Albertans. The privacy provisions are set out in Part 2 of the *Act*.

### Definition of "personal information"

Personal information is defined in section 1(n) of the *FOIP Act* to mean recorded information about an identifiable individual. The provision provides an illustrative list, which includes an individual's fingerprints, blood type or inheritable characteristics. It has been assumed in Alberta that DNA or genetic information is included in the meaning of the term "inheritable characteristics."

The Committee considered whether DNA or genetic information should be expressly included in the definition of personal information in the *FOIP Act*. The Committee reviewed a range of related legislation and noted that no other Canadian public sector privacy legislation specifically includes DNA or genetic information. However, the Committee found provisions for genetic information in other related legislation, such as the Alberta *Health Information Act,* and private sector privacy legislation in other jurisdictions.

The Committee recognized that any amendment to the *FOIP Act* would apply only to the record that contains the analysis of the DNA specimen, and would not apply to any specimens themselves. It would also not be within the scope of the *FOIP Act* to address issues of proprietary interest in the DNA itself, the collection of DNA under federal law, or the use of DNA in a commercial context.

The Committee also discussed biometrics, another identification technology. A biometric is a unique, measurable human characteristic for automatically recognizing or verifying identity. Biometrics are not inheritable characteristics. Biometric identification methodologies include fingerprinting, facial recognition, voice recognition, and iris and retinal scans.

The Committee noted that the use of biometric technology by government, law enforcement, and business would grow in the future, and that there were concerns about the risks that could arise from third party access to this data.

The Committee recommended:

27. That, for greater certainty, the definition of "personal information" (section 1(n)) be amended to add "genetic information," and to specify that "personal information" includes not only information relating to an individual's fingerprints, but biometric information in general.

### Correction of personal information

The *FOIP Act* defines "applicant" as someone who has made a request under section 7(1) of the *Act* (section 1(b)). Under section 36(1) of the *Act*, an "applicant" who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

Given the definition of "applicant," using the word "applicant" in the provision for requests for correction may make it appear that a request for access to personal information must first be made to the public body before the request for correction can be dealt with.

A technical amendment was requested to make it clear that an individual may make a correction request without first making an access request.

The issue of who may make a request on behalf of a minor was raised in this context. It was noted that, under section 84(1)(e), if the individual is a minor, rights may be exercised by a guardian of the minor. The public body has to form an opinion on whether it would constitute an unreasonable invasion of the personal privacy of the minor to disclose the information. The proposed amendment would not change what the law has always been in relation to minors.

The Committee recommended:

28. That sections 36(1) and 37(2) be amended so that an "individual" rather than an "applicant" may make a correction request.

### Use and disclosure of personal information with oral consent

The *FOIP Act* (sections 17(2)(a), 39(1)(b) and 40(1)(d)) permits use and disclosure of personal information held by public bodies only under limited circumstances. One of these is if the individual concerned provides consent in writing.

The Government of Alberta is moving towards electronic access to government services, using multiple access channels. Through a government call centre and Web site (Service Alberta), Albertans can be referred, linked or transferred to program areas to obtain information about government programs and services. It was suggested to the Committee that the *Act*'s requirement that an individual provide written consent to the use and disclosure of his or her personal information places significant constraints on the government's ability to provide services to citizens through call centres.

The Committee reviewed some of the trends that are driving "e-government" within the public sector generally, including more collaborative modes of service delivery, greater interdepartmental coordination of programs designed for particular client groups, rising public expectations regarding levels of service, and the development of information and communications technologies that can facilitate more effective and cost-efficient service delivery.

At the same time, the Committee recognized that respecting Albertans' privacy rights and ensuring that individuals can exchange their personal information and conduct transactions in a secure environment is critical to the success of Service Alberta. Assured privacy protection will also be critical to future developments of the multi-channel service delivery model.

Committee members considered the value of Privacy Impact Assessments (PIAs), which provide a methodology for measuring the impact of new projects on personal privacy and compliance with the *FOIP Act*. The Information and Privacy Commissioner reviews PIAs for new programs and systems, and it was the view of the Committee that, given this experience,

the Office of the Information and Privacy Commissioner should be involved in the development of new rules for consent.

The Committee recommended:

29. That the references in the *Act* to "consent in writing" (section 17(2)(a)) or "consent in the prescribed form" (sections 39(1)(b) and 40(1)(d)) be changed to "consent as prescribed in the regulations"; and that the new rules on the manner of consent be developed, in consultation with the Information and Privacy Commissioner, to

    - state the functional requirements for both oral and written consent,
    - explicitly provide for electronic consent (consent in writing includes electronic consent under the *Electronic Transactions Act*), and
    - set new standards for authentication of identity and notification for oral consent.

### Business contact information

Business contact information is included in the definition of personal information in section 1(n)(i) of the *FOIP Act*. This means that all the *Act*'s provisions for the protection of personal privacy apply to business contact information.

Section 1(n)(i) expressly states that an individual's name, business address and business telephone number is personal information. The Information and Privacy Commissioner has interpreted "personal information" to include, as well, an individual's fax number and e-mail address. All of this personal information is commonly found on an individual's business card.

The Committee received a recommendation that the *Act* be amended to allow more routine use and disclosure of business contact information. At present, public bodies can disclose business contact information only if they determine that the disclosure is not an unreasonable invasion of an individual's personal privacy or if one of the specific disclosure provisions of section 40 of the *Act* applies.

The Committee recognized that, in a business or professional context, many individuals expect and want their name and business affiliation to be shared for purposes such as providing business information, compiling lists of stakeholders, sharing best practices, etc.

A newer use and disclosure of business contact information arises from the development of information and communications technologies. Within most large organizations, including the Government of Alberta, information technology services are coordinated centrally, often with servers dedicated to specific functions, such as electronic mail and Web applications. For such a system to operate efficiently, there is a need for common directory services.

A common directory might include the e-mail addresses of a public body's partners, stakeholders and clients. In many cases, these individuals interact with more than one department and there is an expectation that business contact information, including e-mail address, will be disclosed to facilitate electronic communications.

The Commissioner was not in favour of an amendment stating that disclosure of business contact information is *never* an unreasonable invasion of personal privacy. The Committee considered examples of cases where it would not be appropriate to disclose information, such

as the address of a foster parent, or the name and contact information of an individual who had made a FOIP request. The Committee appreciated the Commissioner's concern regarding exceptional cases and believed that these cases could be addressed during the drafting process.

The Committee recommended:

30. That the *FOIP Act* be amended to allow for the routine use and disclosure of an individual's name, business address, business telephone and facsimile numbers, business e-mail address, and other business contact information.

### Fatality inquiries

There is currently no provision, either in the *Fatality Inquiries Act* or in the *FOIP Act*, for the disclosure of personal information for the purposes of a fatality inquiry. As a result, the Medical Examiner must issue a subpoena for information needed for an inquiry.

The Committee received a recommendation that public bodies be permitted to provide information to the Medical Examiner voluntarily. It was noted that the recommendation did not extend to allowing public bodies to disclose this information to third parties.

The Committee considered whether a new provision to this effect would be more appropriate in the *Fatality Inquiries Act*, since the *FOIP Act* is intended to lay out the general principles rather than supplement other statutes. However, since amendments to the *Fatality Inquiries Act* are not expected for some time, it was suggested that, as an interim measure, a new provision be added to the *FOIP Act*.

The Committee unanimously recommended:

31. That a provision be added to section 40 to permit a public body to disclose information to the Medical Examiner for the purposes of a fatality inquiry.

### Decisions of administrative tribunals

There is currently no provision in the *FOIP Act* that expressly authorizes the disclosure of personal information in decisions of administrative tribunals. Moreover, the statutes that establish these administrative tribunals are generally silent regarding the disclosure of personal information in reasons for their decisions.

Alberta government ministries are responsible for a diverse array of administrative tribunals that decide matters ranging from individual benefit levels, to labour disputes, to compensation for access to privately owned land for drilling. Some tribunals routinely file their decisions with the courts and make them publicly available; some post their decisions on their Web sites; others do not make their decisions publicly available and consider them to have little precedential value.

It was suggested to the Committee that, while there is an increasing demand for electronic publication of all records relating to judicial and quasi-judicial proceedings, there has also been a growing debate, in Canada and abroad, as to whether it is appropriate to publish all decisions. It was noted that the Alberta Court of Queen's Bench recently changed its practice

of publishing certain types of judgments on the Court's Web site, including decisions under the *Child Welfare Act*, the *Dependent Adults Act*, the *Divorce Act*, the *Domestic Relations Act*, and the *Matrimonial Property Act*. The change followed a similar decision in British Columbia. In all the discussions of publication of judicial and quasi-judicial decisions, the case for transparency is countered by the case for preserving some degree of the "practical obscurity" that applied to records before the rise of Web publication and ever more powerful search engines.

The Committee considered a range of options and agreed that each tribunal was in the best position to advise on the appropriateness of disclosure of personal information in its decisions. It was agreed, therefore, that any authorization or requirement to disclose personal information in decisions should be in the legislative instrument that governs the administrative tribunal.

The Committee further agreed that, in view of the practical difficulties of amending a number of statutes separately, it would be helpful to recommend consideration of the use of an omnibus bill to deal with amendments relating to a number of administrative tribunals.

The Committee recommended:

32. That authority for disclosure of personal information in decisions of administrative tribunals be established in the tribunal's governing legislation, and that consideration be given to facilitating the amendment of affected Acts through the use of an omnibus bill in which legislation could be included at the request of individual ministries.

## Municipal assessment roll information

The *Municipal Government Act* (*MGA*) requires each municipality to prepare an assessment roll and make it available for inspection by the public (section 307). The assessment roll includes the names and mailing addresses of property owners.

Municipalities regularly receive requests from the public and businesses for the names and mailing addresses in the assessment roll. The Information and Privacy Commissioner has ruled that, if an applicant makes a FOIP request, the municipality must refuse to disclose this information. This is because the information was collected for the purpose of collecting a tax, and is therefore subject to a mandatory exception to disclosure (section 16(2) of the *FOIP Act*). However, under section 307 of the *MGA*, anyone may inspect the assessment roll and obtain the same information.

A number of submissions to the Committee commented that this situation is confusing to municipal governments and to the public. The Committee also heard that the application of the different provisions is inconsistent from one municipality to another.

The Committee reviewed the purpose of the assessment roll and it was agreed that individual tax-payers should have access to assessment rolls to compare the assessment of their own property with like properties. There was some discussion on the matter of whether personal information of another property owner was needed for this purpose. The Committee also noted that some municipalities are placing the roll on their Web sites, so there is considerable potential for the disclosure of personal information, which many citizens would find very invasive.

In view of the arguments regarding the purpose of the assessment roll, and the fact that Alberta Municipal Affairs supported the proposed amendment, the Committee unanimously recommended:

33. That the *Municipal Government Act* be amended to protect the name and mailing address of the property owner from routine disclosure under section 307 of the *Municipal Government Act*.

## ■ Disclosure of information in archives

The Select Special Committee that reviewed the *FOIP Act* in 1998-99 recommended amendments to the archives provisions of the *Act*. The intention was to clarify for the research community how the principles that inform the *Act*'s exceptions to disclosure would be applied within archives. The existing provision was deleted and a new Part was added to the *Act* addressing both access and privacy. The new Part 3 included an additional provision for the archives of post-secondary educational institutions.

It was reported to the Committee that, after experience with these provisions, further amendments were needed.

### The Provincial Archives and other public body archives

It was noted that the current wording of section 43(1) of the *FOIP Act* requires the archives of a public body to establish that a request for information is "for research purposes." Archives do not normally require their clients to justify their requests for information, except in the case of a request for disclosure under a research agreement (section 43(1)(a)(i)(B)). Research agreements under the *FOIP Act* have stringent confidentiality requirements.

Committee members appreciated that certain research involving personal information requires scrupulous privacy protection. However, it was agreed that the *Act* should not present obstacles to research involving less sensitive information, such as personal information in a record more than 75 years old (section 43(1)(a)(ii)). It was also agreed that it should not be necessary for archives to establish the purpose of a request for this information.

The Committee heard that an amendment was also needed to make it clear that, in accordance with the standard archival practice, all references to time periods are based on the date of the record, not the date of the information in the record.

Finally, it was proposed to the Committee that the provision concerning restrictions or prohibitions by other Acts of Alberta or Canada be deleted. This provision was added to address Alberta statutes that prevail despite the *FOIP Act*, as well as federal statutes that might be inconsistent with provincial legislation. However, the provision was drafted more broadly than intended, and the existing paramountcy provision (section 5 of the *Act*) is all that is needed.

The Committee unanimously recommended:

34. That section 43 be amended to make the reference to disclosure for research purposes apply only to disclosure under a research agreement, to clarify that references to time periods are based on the date of the record, and to delete the reference to restrictions or prohibitions by other Acts.

### Archives of post-secondary educational institutions

Section 43(2) provides for the disclosure of information in the archives of a post-secondary educational body. This provision was added to the *Act* in 1999 to permit post-secondary institutions to promote archival research by allowing disclosure, under a research agreement, of any information in the archives that has been in existence for 25 years or more.

It was reported, however, that the provision for the archives of a post-secondary educational body is not meeting the needs of these institutions or their clients because the confidentiality requirements of the research agreement limit publication.

The Committee accepted the recommendation that the provision should therefore be deleted and that archives of post-secondary educational institutions operate under the same provision as other public body archives.

The Committee unanimously recommended:

35. That the provision for the archives of a post-secondary educational body (section 43(2)) be deleted.

## ■ Independent review

Part 4 of the *Act* defines the powers of the Commissioner. Part 5 describes the processes for conducting reviews and investigating complaints under the *Act*. The Committee considered a range of comments and suggestions relating to the powers of the Information and Privacy Commissioner and the processes involved in reviews and investigations under the *Act*.

### Investigations and mediation by the Office of the Information and Privacy Commissioner

When there is an investigation under section 53 of the *FOIP Act* (for example, an investigation of an alleged breach of privacy), the Commissioner delegates the investigation to a Portfolio Officer. The Portfolio Officer conducts the investigation and produces an investigation report. If the parties are satisfied that the matter is resolved, the investigation report is signed by the Commissioner and is normally publicly released. If the parties are not satisfied and the matter proceeds to inquiry, the investigation report is not provided to the person hearing the inquiry. The same is true of information generated during the mediation process under section 68, that is, when there is a request for a review of a decision that relates to a request for access to information.

The Committee received several comments regarding the investigation and mediation processes, including concerns about the time and cost involved and whether certain information produced during the investigation and mediation processes should be published or made available at a subsequent inquiry.

Since these matters were currently internal policies and practices in the Office of the Information and Privacy Commissioner, the Committee recommended:

36. That the Commissioner review the processes that his Office has established for both mediation, under section 68, and investigations, under section 53(2), and make any necessary changes to the processes after considering the comments made in the public submissions to the Committee.

### Refusal to conduct inquiry

Section 69(1) of the *FOIP Act* states that the Commissioner must conduct an inquiry unless the subject matter of the request has been dealt with in a prior order or investigation report of the Commissioner.

It was also suggested by some public bodies that this section be amended to give the Commissioner additional powers to refuse to hear an inquiry if the circumstances warrant it. The Commissioner's staff expend substantial time and resources during the inquiry process, as do public bodies, preparing and presenting submissions.

The Committee discussed various circumstances relevant to the Commissioner's decision to proceed with an inquiry, including whether the public body has responded adequately to an access request or complaint; whether a complaint could be more appropriately dealt with by means of a procedure under another piece of legislation; the length of time elapsed between the subject matter of a complaint and an inquiry; and if the complaint is frivolous, vexatious or made in bad faith.

The Committee noted that if a party's request for inquiry were refused by the Commissioner under the proposed new provision, the decision would be subject to judicial review. British Columbia recently amended its legislation recognizing their Commissioner's need for this type of power.

Some members of the Committee were concerned that this power was overly broad and expressed opposing views. They preferred to specify the conditions under which the Commissioner could refuse to conduct an inquiry.

The Committee noted supportive comments for the work done by the Office of the Commissioner, and the fact that the Commissioner is appointed to adjudicate on an impartial basis. The Committee recognized that after seven years' experience, the Office of the Commissioner has a mature ability in this area and recommended:

37. That the *FOIP Act* be amended to provide the Commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances.

## ■ Administration of the *Act*

The Committee considered whether any changes should be made with respect to the administration of the *Act*.

### Directory

Section 87 of the *FOIP Act* requires the Minister to publish a directory to assist the public in identifying and locating records. The directory is a reference tool that describes the mandate and function of each public body and provides a description of the records held by the public body, a general listing of the records in the custody or control of each body, a subject index, and contact information.

The Committee noted that respondents generally felt that the print directory was no longer needed and that applicants were well served by other resources, such as Web sites and advisory services.

It was generally agreed that print publication of a directory is not a cost-effective way of providing reliable, current information and a high level of service to the public. The print directory pre-dates the development of the Internet and government Web site access.

The Committee agreed with comments that the directory in its original format is not needed and recommended:

38. That the contents of the FOIP directory include only the name of the public body and contact information for the FOIP Coordinator and that this directory be published only in electronic form on the Freedom of Information and Protection of Privacy Web site.

### Personal information banks

Section 87 of the *FOIP Act* also requires that the directory include personal information banks. A personal information bank (PIB) is a collection of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual. The entry for each PIB must include the title and location of the personal information bank, a description of the kinds of personal information and the categories of individuals whose personal information is included, the authority for collecting the personal information, the purposes for which the personal information is collected, used or disclosed, and the categories of persons who use the personal information or to whom it is disclosed.

The Committee believed that there is a continuing need for a directory of personal information banks to support privacy protection. The Committee agreed, however, that this need could be addressed by making each public body responsible for publishing and maintaining its own directory of PIBs. It was further agreed that the requirements for personal information banks should be the same for all public bodies.

Some Committee members believed it was important that the government ensure compliance with this requirement.

The Committee recommended:

39. That each public body be responsible for maintaining and publishing a directory of its personal information banks in electronic or other form and that the directory for each public body include the title and location of the personal information bank, a description of the kind of personal information and the categories of individuals whose personal information is included, the authority for collecting the personal information, and the purposes for which personal information is collected, used, or disclosed.

### Database of access requests

There is currently no database of information about FOIP requests made to the Government of Alberta and its affiliated agencies. It was suggested that a database along the lines of the database of federal government access requests, which is compiled and published by a university researcher at foilaw.net, would be a valuable resource.

The database was seen as a way of providing Albertans with a starting point for finding their way to the information they want. It was noted that the proposed database would not apply to requests for personal information and that it would not contain the information provided to the requester, simply the text of the request.

The Committee appreciated, however, that this proposal needed further development in terms of design and further information on implementation costs. Therefore, the Committee unanimously recommended:

40. That the Information Management, Access and Privacy division investigate and study the merits of developing a database of requests filed with provincial public bodies similar to foilaw.net.

### Manuals and reading rooms

Section 89 of the *FOIP Act* requires public bodies to provide facilities where the public may inspect any manual, handbook or other guideline used in decision-making processes that affect the public. When the *Act* came into force, public bodies were allowed two years to set up these facilities.

A technical amendment was requested to delete the two-year grace period because the *Act* has now been in force for all sectors for more than two years.

The Committee agreed that, if the *Act* were to be expanded to any other sector, time for implementation could be allowed through the proclamation process.

41. That section 89(1) be amended to delete the phrase "within 2 years after this section comes into force."

### Legislative review of the *FOIP Act*

To ensure that Alberta's access to information and privacy legislation remains current and relevant, section 97 of the *FOIP Act* establishes a requirement for timely review of the *Act* by

a special committee of the Legislative Assembly. The current comprehensive review is the second review of the *Act,* and commenced less than three years after the submission of the report of the last Select Special Committee.

The current review has provided the opportunity for some local public bodies, new to administering the *Act* since the last review, to comment and to propose changes to the *FOIP Act.* A longer review period between the present and the next review would allow time for some experience with new legislative provisions before the beginning of the next review.

The Committee found that the *FOIP Act* is working well, and noted that other access to information and privacy initiatives, such as the implementation of private sector privacy legislation, will require the attention of the Legislative Assembly. A period of six years before the next review would allow time for the first review of the *Health Information Act* and subsequent consideration of harmonization with the *FOIP Act.* A period of six years would also allow for consideration of both Acts within the context of new private sector privacy legislation.

The Committee recommended:

42. That section 97 be amended to allow for a review of the *Act* to begin within six years of the submission of the report of the present Select Special Committee.

### Training in the administration of the *FOIP Act*

Training is essential for all staff in an organization to understand their obligations in protecting the privacy of personal information and managing information with an awareness of the public's right to request access to any record. Not all public bodies have the expertise to offer in-house training, and there is always an ongoing need for training due to staff changes.

Information Management, Access and Privacy (IMAP) currently offers FOIP training to public body employees. Since 1995, nearly 270 courses have been offered for more than 5800 employees. The Committee received comments that training was important and that the Government of Alberta should encourage training and awareness. Training for smaller rural communities was suggested. The Committee noted that IMAP, the Office of the Information and Privacy Commissioner and the University of Alberta had jointly sponsored a Web-based educational program dealing with both access and privacy, the first program of its kind in Canada.

Committee members appreciated that administration of the *FOIP Act* could be complex and believed that training is essential to meet the principles of the *Act* and unanimously recommended:

43. That the Information Management, Access and Privacy division continue to provide a training program and related support services to promote an understanding of the *FOIP Act.*

## RECOMMENDATIONS FOR NO CHANGE

The Committee considered the following issues and determined that no further action was required or the matter was beyond the scope of the Committee's mandate.

### ■ Scope of the *Act*

In its comprehensive review of the current scope of Alberta's public sector access and privacy legislation, the Committee revisited questions canvassed during the last review of whether the scope of the *FOIP Act* should be expanded to include self-governing professional and occupational organizations and private schools and colleges.

#### Self-governing professional and occupational organizations

There are currently over 50 self-governing professional and occupational organizations in Alberta. Within highly regulated professions, these organizations are responsible for setting standards for licensing, certification and admittance; ensuring that only licensed or certified individuals practice the profession or call themselves members of the profession; and investigating and disciplining those who fail to uphold professional and ethical standards, including removing their license or certification to practice.

The Select Special Committee that reviewed the *FOIP Act* in 1998-99 recommended that the *Act* not be extended to self-governing professions, provided these organizations implemented policies for providing access to information and adhered to fair information principles.

The Committee received a number of submissions on this issue. Several stakeholders argued that self-governing professions performed significant regulatory functions and should therefore be accountable to the public under the access and privacy provisions of the *FOIP Act*. The self-governing professions that made submissions generally agreed that they should be required to provide openness and transparency in governance and to observe fair information principles, but submitted that these goals can be achieved more effectively by other means.

One of the key considerations for the Committee in assessing these positions was the right of independent review, which is available under the *FOIP Act*, but is more limited within certain other legislative and policy frameworks. At the same time, some Committee members were persuaded that the *FOIP Act* might not be the best "fit" for certain self-governing professions, particularly those involved in adjudicating complaints.

The Committee considered developments that had occurred since the last review and found that many of the concerns raised in submissions on this issue had already been addressed or were currently being addressed in either legislation or policy.

In view of the progress made since the last review, the evidence that other legislation designed to address issues specific to individual professions was already in place for some organizations, the likelihood that private sector privacy legislation would apply fairly broadly as of 2004, and the general complexity of the evolving access and privacy landscape at the present time, the majority of Committee members recommended:

44. That self-governing professional associations not be made subject to the *FOIP Act*.

## Private schools and private colleges

The *FOIP Act* applies to "educational bodies" as defined in the *Act*. This definition does not include private schools and colleges. The question of whether the *Act* should apply to private schools and colleges attracted considerable comment in the 1998-99 review, but relatively little comment during the current review.

In its broad-ranging review of the scope of the *Act*, the Committee considered whether there should be equivalent access to information and privacy protection in public and private schools. It was noted, as during the previous review, that private schools and colleges are accountable to the public through the Minister of Learning as a consequence of statutory reporting requirements. It was also noted that the Private Schools Funding Task Force had concluded in its 1999 report that private schools should not be subject to the *FOIP Act*. The Committee understood that private schools and private colleges were likely to be subject to private sector privacy legislation in 2004.

Committee members believed that differences in funding between public schools and colleges and private schools and colleges justified different obligations with respect to public-sector access to information legislation.

The Committee recommended:

45. That private schools and private colleges not be made subject to the *FOIP Act*.

## ■ Records and information to which the *Act* applies

### Examination questions

A question to be used on an examination or test is not within the scope of the *FOIP Act* (section 4(1)(g)). This exclusion applies to questions from past test papers that will be used again in the future and question banks created to provide a selection of approved questions for use in the future. The purpose of the exclusion is to preserve the integrity of the examination process.

The Committee considered a request to expand the exclusion to apply to all examination questions that *may* be used on future examinations. It was argued that the present exclusion is unnecessarily restrictive and fetters the ability of instructors in developing effective exams.

The Committee was not persuaded that the proposed amendment was needed and unanimously recommended:

46. That section 4(1)(g) not be amended to exclude all examination questions from the *FOIP Act*.

### Personal information in teaching materials

The *FOIP Act* does not apply to the teaching materials of employees of post-secondary educational institutions (section 4(1)(h)(i)). Teaching materials include records produced or compiled for the purpose of systematic instruction and include records created or compiled to aid the instructor in imparting information, or for distribution to students.

The Committee heard that instructors often become aware of personal information and personal circumstances of students in the course of teaching, and may make incidental notes or reminders of certain facts with the intention of using the information to convey their teaching material more effectively. The Committee considered requests by some post-secondary institutions to expand the definition of teaching materials to include this personal information.

The Committee recognized, however, that if this personal information were excluded from access, students would then no longer have the right to request access to all information about themselves.

The Committee unanimously recommended:

47. That section 4(1)(h) not be expanded to include personal information of a student acquired during the process of instruction or for the purpose of enhancing the learning environment.

### Teaching materials outside the post-secondary educational sector

To protect intellectual property rights, the *FOIP Act* does not apply to teaching materials of employees of a post-secondary educational body or the post-secondary educational body itself (section 4(1)(h)).

The Committee considered requests to extend this exclusion to teaching materials of other public bodies, including schools and police services. It was noted that the Select Special Committee that reviewed the *FOIP Act* in 1998-99 had concluded that the ability of parents to be able to access the curriculum materials of school-age students took precedence over the intellectual property rights of teachers or schools that might be engaged in the production of teaching material.

The Committee also noted that the *Act*'s exceptions could be applied in certain cases to withhold information on teaching materials.

The Committee unanimously recommended that:

48. That section 4(1)(h) not be extended to exclude the teaching materials of all public bodies from the *FOIP Act*.

### Alberta Treasury Branch records

Section 4(1)(r) of the *FOIP Act* excludes a record in the custody or under the control of a treasury branch. The exclusion does not apply to a record that relates to a non-arm's length transaction between the Government of Alberta and another party. The exclusion also does not apply to Alberta Treasury Branch (ATB) records held by other public bodies, such as Alberta Finance. Those records are subject to the *FOIP Act*.

ATB raised some concerns about the application of a public-sector access and privacy statute to a commercial corporation operating in the competitive financial services industry. At present the *FOIP Act* applies very narrowly, since ATB has, since 1997, been required under its own legislation to operate independently of government.

The Information and Privacy Commissioner has consistently ruled that ATB is not subject to Part 2 of the *FOIP Act*. ATB asked for additional assurance that its records, including customer records, would not be disclosed by another public body. ATB also submitted that it would prefer to be subject to the *Personal Information Protection and Electronics Documents Act* (*PIPED Act*) or to the provincial equivalent of the *PIPED Act* as of January 2004, rather than Part 2 of the *FOIP Act*.

The Committee considered this concern in relation to the broader issue of commercial enterprises owned or operated by public bodies. There was some support for the proposition that public sector organizations that compete with private sector businesses should operate within a similar regulatory framework. However, it was not clear that a decision to remove ATB entirely from the scope of the *FOIP Act* would mean that the *PIPED Act* would apply.

The Committee agreed that the application of privacy legislation to ATB was a matter for separate consideration (see Recommendation 12) and therefore recommended:

49. That the exclusion of treasury branch records under section 4(1)(r) of the *FOIP Act* remain unchanged.

## ■ Access to records

### Time limits for processing requests for school records

The *FOIP Act* normally requires public bodies to respond to requests for access to information within 30 days.

The Committee heard from the school sector that the time limit for processing requests can be problematic if an access request involving student records is sent to a school board during the summer school closure. It was suggested that a FOIP request sent to a school board should not require a response during the period that a school is closed. It was noted that, within the educational sector, this exception was needed only for school boards, since universities and colleges remain open during the summer months.

While Committee members were sympathetic to this situation, they were reluctant to amend the FOIP legislation in a way that might negatively affect the access rights of Albertans, and parents in particular. The Committee noted that other public bodies also deal with staff absences and continue to process access requests.

The Committee recommended:

50. That the *FOIP Act* not be amended so that school jurisdictions do not have to process FOIP requests for student records during periods when the schools are closed.

### Authorization to disregard frivolous or vexatious requests

Under section 55 of the *FOIP Act*, a public body may ask the Information and Privacy Commissioner to authorize the public body to disregard a request if it is frivolous or vexatious, or if it is repetitious or systematic in nature and processing the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make requests.

The Committee considered a suggestion that the head of the public body should have the power to decide when this provision applies, with the applicant having the right to request a review of the decision by the Commissioner.

The Committee noted that the Commissioner has issued only two decisions to date authorizing public bodies to disregard a request, so this provision is used infrequently. The Committee also reviewed other provincial legislation in Canada on this point, finding examples of both approaches.

The Committee was not persuaded that there was a need to amend the *Act*'s provision for disregarding requests and recommended:

51. That the *FOIP Act* not be amended to permit the head of a public body to refuse or disregard an access request if that head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious.

## ■ Exceptions to the right of access

### Access to third party business information

Section 16 of the *FOIP Act* is a mandatory exception for disclosure harmful to the business interests of a third party. A public body must not disclose business information of a third party that was supplied in confidence if disclosure would be likely to result in one of the harms specified in that section.

If a public body is considering giving access to information to which section 16 may apply, the public body must notify the third party and provide an opportunity to consent or to make representations as to why the information should not be disclosed. If the public body decides to disclose the third party's information, and the third party requests a review by the Commissioner, the third party bears the burden of proving that the applicant has no right of access to the information.

The Committee considered a range of submissions concerning business information. There were various recommendations for amendments including expanding the range of information to which the exception could be applied, requiring consent to disclosure by the third party, reducing the level of harm required to invoke the exception, and setting a less demanding standard for evidence of likely harm.

There seemed to be little concern that confidential business information had been improperly disclosed in response to an access request, but significant concern that there was insufficient certainty as to how the *Act* would be applied in specific instances. Both businesses and public bodies were also concerned by the costs involved if a matter went to review before the Commissioner.

The Committee also considered a range of comments on the balance between the interests of applicants and third parties, including comments on difficulties encountered by public bodies in assessing competing interests.

The Committee was not persuaded that there was any need to amend the *Act* and was confident that the developing body of Commissioner's Orders, as well as interpretative information developed by Government Services, would assist all parties in interpreting the current provisions fairly. The Committee recommended:

52. That section 16 of the *Act* not be amended to change the balance between the interests of third parties or the rights of applicants.

### Information regarding government contracts

The Committee considered a recommendation to amend the exception for disclosure harmful to the business interests of a third party (section 16) to allow more information to be disclosed about specific dollar values in bids and contracts, as well as a related recommendation to allow more information to be disclosed about the basis for awarding contracts.

While Committee members favoured transparency in the awarding of contracts, they understood that the *Act* already required the disclosure of a substantial amount of information

regarding contracts and they were concerned that disclosure of business information should not give an unfair advantage to a competitor.

The Committee was reluctant to endorse either recommendation in the absence of evidence that there was serious cause for concern, and recommended:

53. That the exception for confidential third party business information (section 16(1)) not be amended to allow more disclosure of information about government contracts awarded to business and the basis for awarding such contracts.

### Disclosure of information harmful to an applicant's health or safety

Section 18(2) of the *FOIP Act* allows a public body to refuse to disclose an applicant's own personal information, on the recommendation of an expert, if disclosure could reasonably be expected to result in grave harm to the individual's health or safety.

The Committee considered a recommendation to amend the *Act* to permit a public body to refuse do disclose *any* information if disclosure is likely to result in harm to the individual's health or safety. Such an amendment would allow a public body to consult an expert on whether an individual's health or safety would be endangered by receiving information about, for example, a violent incident involving a family member.

The Committee reviewed the provisions of section 18 and circumstances when it might be reasonable to withhold personal information from the individual concerned. The Committee was reluctant to expand the number of discretionary exceptions in the *Act* and was not persuaded that an amendment was needed for this purpose.

The Committee unanimously recommended:

54. That section 18 (disclosure harmful to individual or public safety) not be amended.

### Letters of reference for admission to an academic program

Section 19 of the *FOIP Act* is an exception to the general principle that individuals have a right of access to personal information about themselves that is held by a public body. This exception permits a public body to refuse to disclose evaluations or opinions about an individual that were provided in confidence for the purpose of determining suitability, eligibility or qualifications for employment or the awarding of contracts or other benefits.

The Committee considered a recommendation from the post-secondary educational sector that section 19 be amended to allow post-secondary institutions to refuse to disclose references for candidates for admission to undergraduate and graduate university programs.

The Committee noted the argument that the anonymity of references promoted candour and integrity in the admission process, but was in broad agreement that individuals who provide references should be accountable for their opinions.

The Committee unanimously recommended:

55. That section 19 not be expanded to allow a public body to refuse to disclose evaluative or opinion material compiled for the purpose of determining admission to undergraduate and graduate university programs.

### Peer evaluations of student performance

Section 19 of the *FOIP Act* was amended on the recommendation of the 1998-99 Select Special Committee to allow a public body to refuse to disclose personal information supplied in confidence that would identify a peer, subordinate or client who has agreed to participate in a formal employee evaluation process.

The Committee received a request from the post-secondary educational sector to expand this exception to allow a public body to withhold information that would identify a student participant in an evaluation of a fellow student. This kind of evaluation process might be used when students work together on a group assignment. The Committee believed that the proposal would limit the ability of a student to learn how his or her grade was determined, which would not be the case if the grade was decided by the instructor.

The Committee unanimously recommended:

56. That section 19 not be expanded to allow a public body to refuse to disclose peer evaluations of student performance.

### Administrative investigations and proceedings

On the recommendation of the Select Special Committee that reviewed the *FOIP Act* in 1998-99, the definition of "law enforcement" was expanded to include administrative investigations and proceedings. The Information and Privacy Commissioner subsequently interpreted the definition, as amended, to limit the application of the exception for law enforcement (section 20), as well as other provisions of the *FOIP Act* that refer to law enforcement (e.g. the exception for personal privacy and the provision allowing a public body to refuse to confirm or deny the existence of a record). The Commissioner said that, for the term "law enforcement" to apply, there must be a violation of a statute or a regulation.

Several respondents in the post-secondary educational sector recommended an amendment to expand the scope of the definition of law enforcement. These respondents believed that the definition should include administrative processes for dealing with student disciplinary proceedings and evaluation appeals, as well as with investigations and proceedings in the employment and labour relations context.

The Committee examined this issue in detail and considered several options for amending the *Act* to expand the exceptions relating to administrative investigations. The Committee noted that the Commissioner was opposed to further expansion of the definition of law enforcement and was particularly concerned that, in the context of administrative investigations, there are not the same checks and balances that are available in investigations and proceedings related to the enforcement of statutes and regulations. It was argued that, because individuals have fewer protections during administrative investigations, they should have a much higher right of access to their own personal information.

The Committee unanimously recommended:

57. That the law enforcement exception in the *Act* not be expanded.

### Disclosure harmful to intergovernmental relations

Section 21(1)(a) of the *FOIP Act* allows a public body to refuse to disclose information harmful to relations between the Government of Alberta and other levels of government, including local government. Disclosure may be made only with the consent of the Minister responsible for the *FOIP Act* in consultation with the Executive Council.

An amendment was requested to allow public bodies to apply this exception to information if disclosure would be harmful to the relations between a government at any level (not just the Government of Alberta) and any other government or its agencies. This would, for example, allow the exception to be applied to information affecting the relations between a local government and the RCMP. Another suggestion was that the exception should be amended to allow its application to any two public bodies. This would allow the exception to be applied to information affecting the relations between, for example, a local police service and the RCMP, or a regional health authority and a school board.

The Committee was not persuaded, on the basis of the information provided, that an amendment was needed and unanimously recommended:

58. That a discretionary provision not be added to the *Act* to allow local government bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm relations between a local government body and other government entities.

### Disclosure of information supplied in confidence by another government

Section 21(1)(b) of the *FOIP Act* allows a public body to refuse to disclose information supplied in confidence by a government at any level. Disclosure may be made only with the consent of the government that supplied the information.

An amendment was requested to extend this provision to all local public bodies. This would mean, for example, that information supplied in confidence by a regional health authority to any public body could not be disclosed without the consent of the regional health authority.

The Committee considered possible situations where a public body might consider disclosing information provided in confidence by a local public body such as a school board or a health care body. The Committee also examined the related issue of whether information should be considered to have been supplied in confidence merely because it was labelled confidential.

The Committee found no compelling grounds for expanding the exception and unanimously recommended:

59. That section 21(1)(b) not be amended to allow public bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal information supplied in confidence by any local public body.

## ■ Independent review

Section 69(6) states that the Commissioner's inquiry must be completed within 90 days after receipt of the request for review. The time limit encompasses all elements of the review process, including mediation and any formal inquiry. The Commissioner may extend the time period for the review under section 69(6).

The Committee heard concerns about the length of time taken by the Office of the Information and Privacy Commissioner to complete a review. It was noted that half of the cases are handled within the 90-day period; the other half require some kind of extension, mostly at the request of one of the parties.

The Committee also considered concerns about delays when it was necessary to appoint an adjudicator in the event that the Commissioner has a conflict.

The Committee noted that the intent of the *Act* is to ensure that an independent review of decisions can take place and that, even if the process is not completed within the extended time limit, the Commissioner has the power to complete the inquiry.

The Committee recommended:

60. That the provisions relating to time limits for the review process and the time limit extensions on reviews not be amended.

### Power to impose penalties

If a public body fails to comply with a Commissioner's Order under section 72 of the *FOIP Act*, it is guilty of an offence under section 92(1)(f) and liable to a fine of not more than $10,000. The Commissioner does not have the power to impose a fine directly because the *Provincial Offences Procedures Act* applies to offences under section 92. The Commissioner could lay an information with the Provincial Court of Alberta, alleging the commission of an offence under section 92 and proceedings for imposition of a fine would be conducted under that *Act*.

The Committee considered a proposal that the Commissioner be empowered to impose fines directly. In view of the seriousness of the offences and penalties, the Committee believed that a person accused of an offence should have access to all the protections of the court system.

The Committee unanimously recommended:

61. That the Commissioner not have the authority to directly levy a fine for contravention of an offence under the *FOIP Act*.

### Power to award costs

The Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* when conducting an inquiry under section 69 of the *FOIP Act*. These include the power to compel witnesses to attend and answer questions at an inquiry, to compel records to be produced, to hold a person in contempt, and to obtain assistance from law enforcement officers.

The Committee considered a suggestion to add a new power to award costs, so as to reimburse some of a public body's costs when the Commissioner is conducting a review "to break new ground" on interpretation of the legislation. The Committee also considered a suggestion that the Commissioner be given the ability to impose costs and damages if the actions of one party were taken to create a financial burden or other nuisance to another party.

The Committee agreed that power to award costs was more appropriate in the court context and unanimously recommended:

62. That the Commissioner not have the power to award costs to a party following an inquiry.

## APPENDICES

### Appendix A: Submissions to the Review Committee

| | Name | Organization |
|---|---|---|
| 1. | John Van Doesburg | Mountain View Regional Water Services Commission |
| 2. | Gregg R. Ulveland | Jubilee Lodge Nursing Home Ltd. |
| 3. | Shari McNab | Sundre Municipal Library |
| 4. | Dorothy Way | Village of Milo |
| 5. | David Brooks | Alberta College of Technical Institute Students' Executive Council |
| 6. | Dorothy Way | Arrowwood Municipal Library |
| 7. | Ave Bella | Elk Island Catholic Schools |
| 8. | Doug Hancock | Coaldale Police Service |
| 9. | Shirley Kerkhof | Handicapped Housing Society of Alberta |
| 10. | Brian Munday | Alberta Land Surveyors' Association |
| 11. | Stephen Alex Lawrance | |
| 12. | Larry Holstead | Town of Rocky Mountain House |
| 13. | Tony Kelly | Alberta Community Development |
| 14. | Tara DeLeeuw | |
| 15. | H. Clifford Chadderton | The War Amputations of Canada |
| 16. | Debbie Whitehead | Evergreens Foundation |
| 17. | Joseph Forsyth | Foippassociates |
| 18. | Ken Porter | Municipal District of Brazeau No. 77 |
| 19. | Sean Murphy | Protection of Conscience Project |
| 20. | Jens O. Bagh | |
| 21. | Diane Plowman | Peace Health Region |
| 22. | Barb Goertzen | Coaldale Health Care Centre |
| 23. | Rev. Harold C. Black | Three Hills-Carbon Pastoral Charge |
| 24. | W. D. (Don) Wilkinson | Alberta Association of Private Investigators |
| 25. | O. Brian Fjeldheim | Office of the Chief Electoral Officer |
| 26. | Philip G. Lister, Q.C. | |
| 27. | Sue Hindle | Hinton Municipal Library Board |
| 28. | Wendy Cooper | Consulting Engineers of Alberta |
| 29. | Andrea Belanger | Vision Council of Canada |
| 30. | Doug Owram | University of Alberta |
| 31. | Judith Pidgeon | |

| | Name | Organization |
|---|---|---|
| 32. | Betty Whitney | |
| 33. | Martha Kostuch | |
| 34. | John Vogelzang | David Thompson Health Region |
| 35. | Bill Holtby | City of St. Albert |
| 36. | Victoria and Kenneth Wazynick | |
| 37. | Ken Gibson | Alberta Construction Association |
| 38. | David Owen | |
| 39. | Milton Elliot | Clearwater County |
| 40. | R. A. Splane | Agriculture Financial Services Corporation |
| 41. | Charles Hyman | Alberta Teachers' Association |
| 42. | Kevin Miner | Municipal District of Fairview |
| 43. | Don Marshall | Allstate/Pembridge Claims Services and Canadian Insurance Claim Managers' Association, Northern Alberta Chapter |
| 44. | Downey H. (Don) McGladdery | County of Athabasca Library Board |
| 45. | Barbara Clifford | City of Calgary |
| 46. | Mark N. Woolstencroft | |
| 47. | Michele Mulder | Alberta School Boards Association |
| 48. | Lindsay Kelly | Urban Development Institute Alberta, Greater Edmonton Chapter |
| 49. | Jay Miller | |
| 50. | Myra Raugust | Town of Ponoka |
| 51. | Andrew Rogacki | Canadian Association of Direct Response Insurers |
| 52. | Al Schulz | Canadian Chemical Producers' Association |
| 53. | E. Keith Dewey | |
| 54. | Richard W. Covlin | |
| 55. | Larry Presiloski | |
| 56. | Larry Goodhope | Alberta Association of Municipal Districts and Counties |
| 57. | Ruth P. McKinley | Montgomery Legion Place |
| 58. | J. Denise Exton | Strathcona County |
| 59. | Steve Neilly | City of Red Deer |
| 60. | Kerry C. Day | Alberta Treasury Branches |
| 61. | Dianne Nemeth | City of Lethbridge |
| 62. | G. W. Thompson | Alberta Dental Association and College |

| | Name | Organization |
|---|---|---|
| 63. | Pierre Alvarez | Canadian Association of Petroleum Producers |
| 64. | Shirley Swanson | |
| 65. | W. D. Pudwell | Medicine Hat School District No. 76 |
| 66. | Grant Sauter | Lethbridge Police Service |
| 67. | Nicole Kozak | Lethbridge Police Service |
| 68. | Allan P. Jobson | |
| 69. | Nola and Bruce Stigings | |
| 70. | Grahame Newton | Mount Royal College |
| 71. | Les Wetter | Ducks Unlimited Canada |
| 72. | Steven J. Glover | Institute of Chartered Accountants of Alberta |
| 73. | Brendan J. Croskery | Calgary Board of Education |
| 74. | Karen Labuik | Marigold Library System |
| 75. | Mike Chernichen | Canadian Natural Resources Limited |
| 76. | Marshall Chalmers | Alberta Association of Chiefs of Police |
| 77. | W. A. Rogan | County of Grande Prairie No. 1 |
| 78. | Barb Goertzen | Alberta Health Records Association |
| 79. | Bob Myroniuk | Real Estate Council of Alberta |
| 80. | Robert A. Burns | College of Physicians and Surgeons |
| 81. | Terry M. Campbell | Canadian Bankers Association |
| 82. | Karen A. Prentice | ENMAX Corporation |
| 83. | Greg Eberhart | Alberta College of Pharmacists |
| 84. | Fanny Chan | Chinese Benevolent Association of Edmonton |
| 85. | Joan Kaiser | Capital Region Housing Corporation |
| 86. | Jill Ollenberger | |
| 87. | Cynthia Vizzutti | Municipal District of Willow Creek No. 26 |
| 88. | A. B. Maurer | City of Edmonton |
| 89. | M. J. O'Brien | ATCO Gas |
| 90. | David Smith | |
| 91. | Mark Ewan | Alberta Mental Health Board |
| 92. | Jim Rivait | Insurance Bureau of Canada |
| 93. | Sterling M. Eddy | CMA Alberta |
| 94. | Paul E. Rogers | Chevron Canada Resources |
| 95. | Laura Nichol-Stiksma | |
| 96. | Neil J. Camarta | Shell Canada Limited |
| 97. | Sandra Birkholz | City of Leduc |
| 98. | Graeme Flint | NOVA Chemicals Corporation |

| | Name | Organization |
|---|---|---|
| 99. | Glenn R. Kosak | EPCOR Utilities Inc. |
| 100. | Charles Hitschfeld | Adsum Consulting Ltd. |
| 101. | Bill Cade | Universities Coordinating Council |
| 102. | Larry Wilson | Power Pool of Alberta |
| 103. | David L. Ryan | University of Alberta |
| 104. | Joan F. Taylor | Sierra Systems Group Incorporated |
| 105. | Ellen Coe and Eric Stein | Alberta Occupational Health Nurses Association |
| 106. | Dexter Durfey | Association of School Business Officials of Alberta |
| 107. | Owen Voaklander | Alberta Professional Outfitters Society |
| 108. | W. H. Manyluk | |
| 109. | Pat Harrington | Parkland County |
| 110. | Craig Foley | Calgary Catholic School District |
| 111. | Don Thompson | Law Society of Alberta |
| 112. | Judy Kovacs | Archives Society of Alberta |
| 113. | Valerie Schmaltz | Municipal District of Rocky View No. 44 |
| 114. | Jim Hug | Office of the Auditor General |
| 115. | Rick Klumpenhouwer | Calgary Health Region |
| 116. | H. Bruce Reinholz | Business Prospects |
| 117. | Leif Petersen | Detroit Diesel of Canada Ltd. |
| 118. | Hon. Pearl Calahasen | Minister of Aboriginal Affairs and Northern Development |
| 119. | Leonard O. Rodrigues | Alberta Association of Architects |
| 120. | Irene Lewis | Southern Alberta Institute of Technology |
| 121. | Brian Bowles | Leduc County |
| 122. | L. Graham | Alberta College of Optometrists |
| 123. | Lewis and Doris Boehr | |
| 124. | Allaudin Merali | Capital Health |
| 125. | Cindy Ady, MLA | Social Care Facilities Review Committee |
| 126. | Dieter Remppel | |
| 127. | Frank Work, Q.C. | Office of the Information and Privacy Commissioner |
| 128. | Roger Jackson | Alberta Government Services, on behalf of the Government of Alberta |
| **Responses to Preliminary Report** | | |
| 1. | Don Thomas | |
| 2. | Jens Bagh | |
| 3. | H. Clifford Chadderton | The War Amputations of Canada |

| | Name | Organization |
|---|---|---|
| 4. | Ken Gibson | Alberta Construction Association |
| 5. | David Owen | |
| 6. | Judith Pidgeon | |
| 7. | Brendan J. Croskery | Calgary Board of Education |
| 8. | Richard Fraser, Q.C. | Alberta Association of Private Investigators |
| 9. | Hon. Ty Lund, MLA | Alberta Infrastructure |
| 10. | Karen A. Prentice | ENMAX Corporation |
| 11. | Jean Graham | David Thompson Health Region |
| 12. | Hon. Ed Stelmach, MLA | Alberta Transportation |
| 13. | Ronald Bond | University of Calgary |
| 14. | Ron Weir | |
| 15. | Hon. Gene Zwozdesky, MLA | Alberta Community Development |
| 16. | Larry Goodhope | Alberta Association of Municipal Districts and Counties |
| 17. | David L. Ryan | |
| 18. | Frank Work, Q.C. | Office of the Information and Privacy Commissioner |
| 19. | Todd Croll | Imperial Parking Canada Corporation |
| 20. | Dieter Remppel | |
| 21. | Sean Murphy | Protection of Conscience Project |
| 22. | Pierre Alvarez | Canadian Association of Petroleum Producers |
| 23. | Hon. Clint Dunford, MLA | Alberta Human Resources and Employment |
| 24. | Valerie Schmaltz | Municipal District of Rocky View No. 44 |
| 25. | Andrew Rogacki | Canadian Association of Direct Response Insurers |
| 26. | W. H. Manyluk | |
| 27. | Don Thompson | The Law Society of Alberta |
| 28. | Hon. Victor Doerksen, MLA | Alberta Innovation and Science |
| 29. | Robert A. Burns | College of Physicians and Surgeons of Alberta |
| 30. | Elisabeth R. Ballermann | Health Sciences Association of Alberta |
| 31. | Cindy Dytiuk | Leduc County |
| 32. | Sheryl Kapty | Alberta Mental Health Board |
| 33. | Pat Harrington | Parkland County |

## Appendix B: Oral Presentations to the Review Committee

| Name | Organization |
|---|---|
| Brian Fjeldheim, Chief Electoral Officer<br>Bill Sage, Deputy Chief Electoral Officer | Office of the Chief Electoral Officer |
| Don Wilkinson, President<br>Richard Fraser, Q.C., Counsel | Alberta Association of Private Investigators |
| H. Clifford Chadderton, Chief Executive Officer | The War Amputations of Canada |
| Michele Mulder, President<br>David Anderson, Executive Director<br>Debra Tumbach, Counsel | Alberta School Boards Association |
| Robert Clark, Ethics Commissioner and former Information and Privacy Commissioner | Office of the Ethics Commissioner |
| Pierre Alvarez, President<br>Onno DeVries, Manager – Crude Oil and Fiscal Policy<br>Larry Morrison, Manager – Oil Sands<br>Ray Hansen, General Counsel for Syncrude | Canadian Association of Petroleum Producers |
| Al Schulz, Regional Director, Alberta | Canadian Chemical Producers' Association |
| Jim Rivait, Vice-President – Prairies, NWT and Nunavut<br>Neil Miller, Vice-President, Northern Alberta, Wawanesa Insurance<br>Don Marshall, Claims Manager, Allstate Insurance | Insurance Bureau of Canada |
| Judy Kovacs, Secretary, Alberta Society of Archivists | Archives Society of Alberta |
| Jo-Ann Munn-Gafuik, University Archivist, Information and Privacy Coordinator | Universities Coordinating Council |
| Dieter Remppel | |

| Name | Organization |
|---|---|
| Tara DeLeeuw | |
| Ken Nielsen, Q.C., President<br>Dave Guenter, Policy Counsel<br>Don Thompson, Executive Director | Law Society of Alberta |
| Laurie Beveridge, Assistant Deputy Minister<br>Mike Reynolds, Executive Director, Private Agent Services, General Registry<br>Connie Schultz, Data Access Coordinator, Private Agent Services, General Registry | Alberta Registries, Alberta Government Services |
| Roger Jackson, Deputy Minister, Alberta Government Services | On behalf of the Government of Alberta |
| Frank Work, Q.C., Alberta Information and Privacy Commissioner<br>Lisa McAmmond, Legal Counsel | Office of the Information and Privacy Commissioner |